

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34847

CHRISTOPHER RICHEY,)	2009 Unpublished Opinion No. 484
)	
Petitioner-Appellant,)	Filed: June 2, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
STATE OF IDAHO,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Respondent.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Order summarily dismissing petition for post-conviction relief, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

GUTIERREZ, Judge

Christopher T. Richey appeals from the district court's summary dismissal of his petition for post-conviction relief. We affirm.

I.

FACTS AND PROCEDURE

In October 2004, Richey was convicted of rape and given a unified twenty-year sentence with three years fixed, with the trial court retaining jurisdiction. Following a period of retained jurisdiction, the court suspended Richey's sentence and placed him on probation. No direct appeal was pursued. Richey subsequently violated the terms of his probation and in August 2006, the district court ordered his probation revoked and his sentence executed. This Court affirmed the trial court's order revoking probation and executing his sentence without modification. *State v. Richey*, Docket No. 33398 (Ct. App. April 27, 2007) (unpublished). The remittitur issued on May 21, 2007.

On June 29, 2007, Richey filed a pro se petition for post conviction relief. He alleged as grounds for the petition a “probation violation,” that the “district court abused its discretion by failing to *sua sponte* reduce the previously imposed sentence,” ineffective assistance of counsel at the trial and sentencing, and that the prosecutor had erred in its charging decision. He also asserted a defense to the rape charge and claimed that the original sentence imposed was illegal. The state responded, moving to dismiss his petition arguing, among other things, that the petition was time-barred except as to issues relating to the revocation of probation. Richey filed a motion for appointment of counsel, which the district court granted. The court appointed the Kootenai County Public Defender’s Office, the same office that had represented him in the 2006 probation revocation proceedings, to represent him in his post-conviction action.

After a hearing on the state’s motion for summary dismissal, the district court granted the motion, holding that all but one of Richey’s claims were untimely and that the remaining claim--that the district court erred in *sua sponte* failing to reduce his previously imposed sentence upon revoking his probation--was barred by *res judicata*. Richey now appeals.

II.

ANALYSIS

Richey argues that we should vacate the district court’s summary dismissal of his post-conviction petition, because the appointment of the same public defender’s office that represented him in his 2006 probation revocation proceedings to also represent him in this post-conviction proceeding resulted in a conflict of interest that violated his due process rights. However, there is no evidence in the record that Richey objected during the proceedings in the district court to the appointment of an attorney from the Kootenai County Public Defender’s office as his post-conviction counsel. It is well established that issues which are raised for the first time on appeal will not be considered. *DeRushé v. State*, 146 Idaho 599, 602, 200 P.3d 1148, 1151 (2009); *Dunlap v. State*, 141 Idaho 50, 58, 106 P.3d 376, 384 (2004); *McCoy v. State*, 129 Idaho 70, 74, 921 P.2d 1194, 1198 (1996). Thus, because this claim was not raised to the district court, we conclude that it has not been preserved for appeal and will not be considered. *See DeRushé*, 146 Idaho at 602, 200 P.3d at 1151 (holding that the defendant could not raise an allegation of a lack of specificity in the state’s motion to dismiss his post-conviction petition for the first time on appeal); *Dunlap*, 141 Idaho at 58, 106 P.3d at 384 (holding that the defendant could not raise, for the first time on appeal, several issues, including whether he was denied due

process because the trial court failed to ensure he was competent to plead guilty and whether his constitutional rights were violated due to a conflict relating to the public defender contract and the plea agreement); *McCoy*, 129 Idaho at 74, 921 P.2d at 1198 (concluding that the defendant could not raise for the first time on appeal a contention that he was denied conflict-free counsel with respect to his Rule 35 motion and subsequent appeal from the district court's denial of the motion). We also note that as the district court held, the only claim in Richey's post-conviction petition that was timely was his contention that the district court abused its discretion in failing to *sua sponte* reduce his previously imposed sentence upon revoking probation. On appeal Richey has not challenged any of the district court's findings or the specific dismissal of any individual claim as error. Thus, there remained no issue upon which Richey's post-conviction counsel would have been conflicted since the sole remaining issue was an allegation of error by the court, not by Richey's trial counsel. Accordingly, we affirm the district court's summary dismissal of Richey's petition for post-conviction relief.

Judge PERRY and Judge GRATTON **CONCUR.**